

DRAFT 4.28.22

MEMORANDUM OF AGREEMENT BY AND AMONG
U. S. ENVIRONMENTAL PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION AND THE TOWN OF KEARNY REGARDING
THE SYNCON RESINS SUPERFUND SITE

THIS AGREEMENT is made on this

WHEREAS, this Memorandum of Agreement (“Agreement”) is entered into among the United States Environmental Protection Agency (“EPA”), the New Jersey Department of Environmental Protection (“NJDEP”), and the Town of Kearny, Hudson County, New Jersey (the “Town”) (collectively, “the Parties”);

WHEREAS, EPA performed a response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “Superfund”), 42 U.S.C. §§ 9601-9675, at the Syncon Resins Superfund Site, located at 77-89 Jacobus Avenue in the Town (hereinafter the “Site”);

WHEREAS, the Site consists of property designated as Block 289, Lots 12, 13 and 13R on the Tax Map of the Town (collectively referred to as the “Property”);

WHEREAS, NJDEP and the Administrator of the Spill Compensation and Control Act (“Spill Act”) incurred cleanup and removal costs at the Site pursuant to N.J.S.A. 58:10-23;

WHEREAS, the Town is the owner of tax sale certificate numbers 939422 and 939423 dated June 23, 1995 (“Town Tax Lien”), which constitutes a lien on the Property;

WHEREAS, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the United States of America, on behalf of EPA, filed a lien against Lot 12 of the Property on February 17, 1995, and against Lots 13 and 13R of the Property on December 31, 1996, in the amount of the total unreimbursed response costs incurred and to be incurred by EPA in performance of response actions at the Site (hereinafter the “CERCLA Lien”);

WHEREAS, pursuant to N.J.S.A. 58:10-23.11f, the Administrator of the Spill Compensation and Control Fund and NJDEP filed a lien against the Property on September 15, 1995 (hereinafter the “Spill Act Lien”);

WHEREAS, EPA, NJDEP, and the Town desire that all liens be released through a tax foreclosure action against the Property in order to facilitate the sale of the Property to a redeveloper or end user free and clear of all liens;

WHEREAS, the Parties agree that a sale of the Property to a redeveloper or end user is contingent on the third-party purchaser entering into a pre-purchase Administrative Consent Order (“ACO”) with the NJDEP pursuant to which the third-party purchaser agrees to implement the Operation and Maintenance (“O&M”) of the groundwater treatment and containment remedy that NJDEP operates at the Site as well as any other necessary remediation activities, and

implement institutional controls in the form of a deed notice and a Classification Exception Area ("CEA");

WHEREAS, EPA, NJDEP, and the Town acknowledge that the fair market value of the Property will not permit each party's lien to be satisfied in full, but have agreed to permit the sale of the Property;

WHEREAS, EPA supports the redevelopment of Superfund sites and is willing to release its CERCLA Lien in consideration of compensation as provided below;

WHEREAS, NJDEP supports the redevelopment of Superfund sites and is willing to release its Spill Act Lien in consideration of compensation as provided below;

WHEREAS, the Town supports the redevelopment of Superfund sites and is willing to release its tax liens in consideration of compensation as provided below; and

WHEREAS, at the closing on the sale of the Property EPA, the NJDEP, and the Town have agreed to distribute the proceeds of sale based upon the terms set forth herein.

NOW THEREFORE, the Parties enter into this Agreement to express their intent to undertake the following actions with respect to foreclosure, the proceeds of sale, and the release of all liens:

1. Within sixty (60) days of the execution by all Parties to this Agreement, the Town expects to commence and prosecute a tax sale certificate foreclosure against the Property with respect to Tax Liens 939422 and 939423 (referred to as the "Foreclosure Action"). The Town is not required to name EPA, the United States of America, or the NJDEP, defendants in the Foreclosure Action.

2. Unless either or both Tax Liens 939422 and 939423 are not redeemed during the Foreclosure Action, the Town's tax collector will execute the affidavit of non-redemption. Unless Tax Liens 939422 and 939423 are redeemed, the Town will seek to enter a final judgment of foreclosure (the "Final Judgment"), thereby vesting title to the Property in the Town. Should the Town acquire title to the Property via foreclosure, it should submit an Exemption from Spill Act Liability Certification form to the Department. The referenced form and instructions are available on the Department's website [HYPERLINK "https://www.nj.gov/dep/srp/srra/forms/exemption_spill_act.pdf?version"]. EPA intends to issue a comfort/status letter to the Town consistent with EPA's 2019 Policy on the Issuance of Superfund Comfort/Status Letters and in accordance with the new and updated model comfort/status letters as transmitted by EPA's September 30, 2021 memorandum at [HYPERLINK "https://www.epa.gov/system/files/documents/2021-10/comfort-status-model-letters-mem-2021.pdf"].

3. If either or both Tax Liens 939422 and 939423 are redeemed prior to Final Judgment, the Town will provide the EPA and NJDEP with the name and contact information for the person(s) or entities that redeemed said Tax Liens and the Parties agree that they will take no further actions and this Agreement will no longer be in effect. Nothing herein shall preclude the EPA and/or NJDEP from pursuing its claims and enforcing its liens against the party that redeems the tax liens.

4. The Town intends to institute action to designate the Property as an "Area in Need of Redevelopment". Upon such designation and upon the entry of the Final Judgment, the Town expects to market the Property for sale through a Request for Proposal process and to enter into a Contract for Sale for the maximum market value as determined by the Town and subject to the agreement of EPA and NJDEP. The Parties intend that the Contract for Sale will contain the contingency that the third-party redeveloper or other end user enter into a pre-purchase ACO with the NJDEP to assume the O&M of the groundwater remedy under NJDEP direct oversight pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. and implement and comply with all institutional controls as required by EPA and NJDEP. Upon the Town's entering into a Contract for Sale of the property to a third-party redeveloper or other end user, the Town would have the right to approve the redeveloper and the redevelopment agreement pursuant to N.J.S.A. §40A:12A-1, et seq.

5. If the Town is unable to find a satisfactory buyer within one year of the entry of the Final Judgment ("Contract Deadline"), the Parties may extend the Contract Deadline in six (6) months increments, (not to exceed three (3) extensions, for a total of eighteen (18) months), upon written notice and agreement of the Parties prior to the Contract Deadline.

6. If the Town enters into a Contract of Sale, at closing, the Town intends to abate, remove, and relinquish the Town Tax Lien with respect to the Property.

7. Following the time the Town enters into a Contract for Sale, EPA and the NJDEP expect to proceed to process a discharge and release of their respective CERCLA and Spill Act Liens. After the date of execution of the Contract for Sale and prior to closing on the Property, the prospective buyer and the NJDEP are expected to enter into a pre-purchase ACO.

8. At the closing on the sale of the Property, (1) EPA intends to provide notice of a discharge and release of EPA's CERCLA Lien, (2) the NJDEP intends to provide notice of a discharge and release of NJDEP's Spill Act Lien, (3) the Town intends to endorse the Town Tax Lien for cancellation. The Parties agree that the proceeds from the sale will be distributed by the title agent ("Title Agent") as follows:

- a. First, the closing costs, broker's commission, realty transfer fee and any other cost associated with the closing will be paid from the proceeds. The proceeds remaining shall constitute the net proceeds.
- b. From the net proceeds, distribution shall be according to the following tiers:

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Tier 1: Net proceeds up to \$18M will be split: 70% EPA,
13% NJDEP, 17% Town,

Tier 2: Net proceeds between \$18M and \$20.5M will be split: 50%
EPA, 14% NJDEP, 36% Town

Tier 3: Remaining net proceeds above \$20.5M will be split: 53.75%
EPA, 21.25% NJDEP, 25% Town

c. The method of payments shall be as follows:

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TO EPA:

- i. Within 30 days of the Town's closing on the sale of the Property to a redeveloper or other end user, the Title Agent will pay to EPA its distribution.
- ii. The payment referenced in subparagraph i., above, will be made by electronic funds transfer ("EFT") to the EPA Hazardous Substances Superfund in accordance with instructions provided below. To effect payment via EFT, the Town will instruct any designated title company at closing to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to the Town and the Title Agent.
- iii. The Title Agent will make payment to EPA by Electronic Funds Transfer (EFT) through the Pay.gov website using the following link: [HYPERLINK
"https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pay.gov%2Fpublic%2Fform%2Fstart%2F11751879&data=04%7C01%7CUrdaz.Damaris%40epa.gov%7C90df0d8aa8a54e2fe3dd08d8b25ef93d%7C88b378b367484867acf976aacbe6a6a7%7C0%7C0%7C637455468257165177%7CUnknown%7CTWFpbGZsb3d8eyJWljoMC4wLjAwMDAiLCJQIjIjIjIuMzIiLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=RHJ2IFJfc91i4lgr4%2Fu2yF%2F1nN2PtvmvgBxggDyaBQx0%3D&reserved=0" \h
]. The following information shall be included on the payment form:
 - a. Amount of Payment
 - b. Name of remitter

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- c. Site/Spill identifier: 02 33
- d. Site Name: The Syncon Resins Superfund Site
- iv. At the time of payment via EFT, the Title Agent will send notice, by email, that such payment has been made to the following:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268
[HYPERLINK "mailto:cinwd_acctsreceivable@epa.gov" \h] and
[HYPERLINK "mailto:chalifoux.jessica@epa.gov" \h]

and:

Pamela J. Baxter, PhD, CHMM
Remedial Project Manager
Superfund and Emergency Management -Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866
[HYPERLINK "mailto:baxter.pamela@epa.gov"]

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as well as to:

Frances M. Zizila
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
[HYPERLINK "mailto:zizila.frances@epa.gov"]

Such notice will reference the date of the EFT, the payment amount, the name of the Site and Site/Spill identifier.

TO NJDEP

- i. Within 30 days of the Town's closing on the sale of the Property to a redeveloper or other end user, the Title Agent will pay to NJDEP its distribution.

- ii. The payment referenced in subparagraph iv., above, will be made by electronic funds transfer ("EFT") to the NJDEP Hazardous Discharge Site Cleanup Fund in accordance with instructions provided below. To effect payment via EFT, the Town will instruct any designated title company at closing to remit payment in the required amount via EFT using the following information, or such other updated EFT information that NJDEP may subsequently provide to the Town and the Title Agent.
- iii. The Title Agent will make payment to NJDEP by Electronic Funds Transfer (EFT) using the information below:

Receiving Bank: Wells Fargo Bank NA
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
(704) 444-6094

Account Name: Hazardous Discharge Site Cleanup Fund
(HDSCF)

- iv. At the time of payment via EFT, the Title Agent will send notice, by email, that such payment has been made to the following:

New Jersey Department of the Treasury
Division of Revenue & Enterprise Services
PO Box 417
Trenton, NJ 08646-0417
[[HYPERLINK "mailto:elaine.silvestri@treas.nj.gov"](mailto:elaine.silvestri@treas.nj.gov)]

and

NJDEP
Site Remediation & Waste Mgmt. Program
401 East State Street
Trenton, NJ 08625-0420
[[HYPERLINK "mailto:david.haymes@dep.nj.gov"](mailto:david.haymes@dep.nj.gov)]
[[HYPERLINK "mailto:frank.defeo@dep.nj.gov"](mailto:frank.defeo@dep.nj.gov)]

Such notice will reference the date of the EFT, the payment amount, the name of the Site, and that the payment was made to the HDSCF.

TO THE TOWN:

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- i. Within 30 days of the Town's closing on the sale of the Property to a redeveloper or other end user, the Title Agent will pay to the Town its distribution.
- ii. The payment referenced in subparagraph i., above, will be made by electronic funds transfer ("EFT") to the Town in accordance with instructions to be provided at Closing to the designated title company.
- iii. At the time of payment via EFT, the Title Agent will send notice, by email, that such payment has been made to the following:

Stephen Marks
Town Administrator
402 Kearny Avenue
Kearny, New Jersey 07042
[HYPERLINK "mailto:smarks@kearnynj.org"]

Such notice will reference the date of the EFT, the payment amount and the name of the Site.

9. This Agreement expresses the intentions of the Parties with respect to the matters addressed herein and supersedes all discussions, communications and agreements expressed or implied, written, or oral, by or among the Parties regarding the matters addressed herein. This Agreement may be amended by the mutual written consent of all the Parties. Nothing in this Agreement alters the statutory, regulatory, or other authority or responsibilities of the EPA.

10. Notification to EPA of Status. Until such time as full payment has been made to EPA and NJDEP as discussed in Paragraph 8 of this Agreement, the Town expects to advise EPA and NJDEP in writing, by contacting counsel at the email addresses provided by Paragraph 8.c. above every ninety (90) days following the entry of the Final Judgment until the date that full payment has been made pursuant to Paragraph 8, as to the status of the sale or transfer of the Property from the Town to a redeveloper or end user.

11. This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Town, NJDEP, or EPA, their officers or employees, or any other person. This Agreement does not apply to any person outside of the Town, NJDEP, and EPA.

12. NJDEP continues to conduct O&M of the groundwater treatment and containment remedy and other required remediation. EPA completed its response action at the Property in October 2018 and has demobilized from the Site. Pursuant to CERCLA Section 121, EPA's

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most recent Five -Year Review conducted in 2021 identified that institutional controls in the form of a deed notice and a CEA are required to be placed on the Property for the remedy to be protective in the long-term.

IN WITNESS, this Memorandum of Agreement has been signed by the Parties.

MEMORANDUM OF AGREEMENT BY AND AMONG U.S. ENVIRONMENTAL PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND THE TOWN OF KEARNY REGARDING SYNCON RESINS SUPERFUND SITE

FOR THE TOWN OF KEARNY

By:

Title:

Dated:

**MEMORANDUM OF AGREEMENT BY AND AMONG U. S. ENVIRONMENTAL
PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, AND THE TOWN OF KEARNY REGARDING THE SYNCON RESINS
SUPERFUND SITE**

FOR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: David E. Haymes

Title: Administrator, New Jersey Spill Compensation Fund

Director, Division of Enforcement, Technical & Financial Support

Dated:

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PROTECTION AGENCY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, AND THE TOWN OF KEARNY REGARDING THE SYNCON RESINS
SUPERFUND SITE**

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Pat Evangelista

Title: Director, Superfund and Emergency Management Division

Dated:

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